



Testimony of

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On behalf of the National Mining Association

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Environment

Committee on Transportation and Infrastructure

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## **INTRODUCTION**

My name is John Mudge. I am the Director of Environmental Affairs for Newmont Mining Corporation. Newmont is a U.S. company headquartered in Denver. Newmont engages in gold and copper mining and mineral processing operations in the Western United States, and has extensive mining operations on five continents worldwide.

As an environmental specialist at Newmont for the past 24 years, I am intimately familiar with the potential dangers posed by hardrock mine wastes that are not properly managed, as well as the importance of reclaiming mine sites after their useful life to eliminate such dangers. Newmont and other mining companies spend enormous sums each year to ensure that their mining operations are in fact fully protective of the environment. Newmont has received many awards for its reclamation activities, including a recent award in 2005 from the BLM for 40 years of sustainability, reclamation and rehabilitation on the Carlin Trend in Nevada.

Unfortunately, despite the environmentally-sound practices engaged in by mining companies today, there remain historic abandoned mines in the West that were operated before modern environmental regulations were in place and that were not properly reclaimed by their owners.

I am here on behalf of the National Mining Association and its member companies to urge this Committee to develop Good Samaritan legislation that will create a framework and incentives for governmental entities, citizens groups, non-profit organizations, and mining companies like Newmont to voluntarily remediate the pollution problems caused by others at such abandoned hardrock mine lands (“AMLs”).

Although it may seem counterintuitive, existing federal and state environmental laws are the major obstacles that stand in the way of voluntary cleanups. A mining company or other person not previously associated with a given AML that begins to remediate the site could be potentially liable under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) for cleanup of the entire site to strict CERCLA standards, even though it did not create the contamination at issue. In addition, such a company could be required under the Clean Water Act to prevent discharges to surface waters from the AML in perpetuity, unless those discharges meet strict effluent limitations and do not result in exceedences of stringent water quality standards -- something that may not be possible and, in any event, may be so expensive that no rational company would undertake the voluntary cleanup.

The Western Governors’ Association, the National Academy of Sciences, and the Center of the American West (associated with the University of Colorado) have all recognized the legal impediments to voluntary clean-ups of AMLs deriving from federal and State environmental laws, and have urged that these impediments be removed.<sup>1</sup> Good Samaritan legislation that does so would, we believe, incentivize mining companies and others to spend more monies advancing the public good by cleaning up AMLs.

To be effective, such Good Samaritan legislation must include certain key concepts:

1. Mining companies that did not create the environmental problems caused by the AML in question should be allowed to qualify as “Good Samaritans.” Mining companies have the

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<sup>1</sup> See Western Governors’ Association & National Mining Association, Cleaning Up Abandoned Mines: A Western Partnership at 8, available at [www.westgov.org/wga/publicat/miningre.pdf](http://www.westgov.org/wga/publicat/miningre.pdf); National Research Counsel, Hardrock Mining on Federal Lands (1999) at 72, reproduced at [http://www.nap.edu/html/hardrock\\_fed\\_land/index.html](http://www.nap.edu/html/hardrock_fed_land/index.html); Center of the American West, Cleaning Up Abandoned Hardrock Mines in the West (2005) at 20-24, available at [www.centerwest.org/cawabanonedmines.pdf](http://www.centerwest.org/cawabanonedmines.pdf).

resources, know-how, and technology to efficiently and appropriately assess the problems present at an AML and to remediate those problems, often in conjunction with undertaking reclamation measures at nearby active mines which the company operates.

2. Individual Good Samaritan projects should be subject to review and authorization by EPA (and/or the States), after adequate opportunity for public notice and comment. Such authorization, which can be granted in the form of a Good Samaritan permit, should specify the scope and details of the Good Samaritan project that will be undertaken. Governmental authorization of such projects will ensure that a mining company or other person cannot misuse the Good Samaritan permit in order to engage in for-profit mining and other activities that are not necessary to remediate the site.
3. Good Samaritan projects should be allowed so long as they will result in a significant benefit to the environment, even if they will not result in the clean-up of all pollution at an AML or the attainment of all otherwise applicable environmental standards, such as stringent water quality standards. The perfect should not be the enemy of the good, particularly where persons will be voluntarily remediating problems for which they have no legal or factual responsibility.
4. EPA and the States must be given discretion to waive or relax the environmental requirements, standards and liabilities arising under State and federal environmental laws (particularly liability under CERCLA and the Clean Water Act) that could otherwise be applicable and that deter Good Samaritans from undertaking remedial actions.
5. The types of remedial activities that can be authorized as Good Samaritan activities must include the processing and reuse of ores, minerals, wastes, and materials existing at an

AML site -- even if this may result in the mining company recovering metals from such wastes and making some profit on its Good Samaritan operations. Such processing and reuse of historic mining materials may often be the most efficient and least costly means of cleaning up an AML site, with the wastes from any reprocessing or reuse activities being disposed of in accord with current environmental standards. The fact that a mining company could potentially make a profit on such activities would provide an added incentive for companies to clean up AMLs, although it should be kept in mind that, given the costs involved and the volatility of commodity prices, it is just as likely that a company would lose money as make a profit.

## **BACKGROUND**

By way of background, mining activities have taken place in the western States (including on public lands) for the past century and a half. Most of this mining occurred before the advent of modern environmental regulation at the State or federal level. As a result, many historic mining operations were abandoned without being adequately reclaimed to ensure against potential future environmental damage.

Although there are thousands of AMLs located in the western States, no one really knows how many pose significant dangers to our nation's waterways, soils, groundwater or air. The Western Governors' Association has estimated that more than 80% of AMLs do not pose any environmental or safety problems.<sup>2</sup> The Center of the American West recently concluded that "only a small fraction" of the abandoned mines are causing significant problems for water

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<sup>2</sup> Western Governors' Association & National Mining Association, Cleaning Up Abandoned Mines: A Western Partnership at 5, available at [www.westgov.org/wga/publicat/miningre.pdf](http://www.westgov.org/wga/publicat/miningre.pdf).

quality.<sup>3</sup> Nonetheless, the federal land management agencies and the States are generally agreed that at least some percentage of these AMLs are causing pollution of rivers and streams, and potential contamination of air and groundwater resources.

At the vast majority of AMLs, there are no financially viable owners, operators, or other responsible persons whom the federal government or the States can pursue in order to fund clean-up of these sites. While the federal land management agencies can use monies within their budgets to investigate or remediate AMLs located on the public lands, the fact is that those budgets are limited. So are grant monies that can be provided under environmental programs aimed at investigating or remediating pollution, such as Clean Water Act § 319 grants or grants under the Brownfields Revitalization Act. Effective Good Samaritan legislation can, we believe, provide incentives for private parties, NGOs, citizens groups, and governmental entities to partially fill this gap and help remediate some AMLs posing environmental dangers.

### **ELEMENTS OF EFFECTIVE GOOD SAMARITAN LEGISLATION**

Efforts to enact Good Samaritan legislation have been ongoing in the Congress for the past decade. It has become clear to NMA and its members that, in order to be effective, Good Samaritan legislation must include a number of elements.

1. Mining companies must be allowed to qualify as Good Samaritans. The NMA has no quarrel with the concept that to be a Good Samaritan, an entity must not have caused the environmental pollution at issue. That does not mean, however, that mining companies should automatically be excluded from the universe of persons who can qualify as Good Samaritans. The majority of AMLs were created decades ago, before most existing mining companies were

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<sup>3</sup> Center of the American West, *Cleaning Up Abandoned Hardrock Mines in the West* (2005) at 31.

even in operation. There is simply no reason that an existing company (such as Newmont) should be precluded from being a Good Samaritan with respect to an AML for which it was not previously affiliated, simply because Newmont is a mining company.

To the contrary, there are good reasons why mining companies should be allowed to qualify as Good Samaritans. Mining companies have the resources, know-how, and technology to properly assess environmental dangers posed by an AML, and to efficiently remediate such sites. Indeed, to the extent that AMLs are located near active mining operations, a mining company would be in the best position to efficiently use equipment and personnel from its current operations, including its current reclamation operations, to remediate or reclaim a nearby AML for which it never had been responsible.

In fact, the mining industry has been front and center in trying to deal responsibly with AMLs. The National Mining Association, in cooperation with the Western Governors' Association, initiated the Abandoned Mine Land Initiative ("AMLI"). The AMLI was the first cooperative effort between industry and government to address AML issues, and focuses on disseminating data on the scope of the AML problem, technologies that can be used to address AML sites, and legal impediments to voluntary cleanup of AMLs. NMA, along with the Office of Surface Mining ("OSM") and the Interstate Mining Compact Commission representing the States also co-founded the Acid Drainage Technology Initiative ("ADTI"). The purpose of the ADTI is to develop and disseminate information about cost-effective and practical methods and technologies to manage drainage from active and abandoned mining and processing operations. Industry has also already spent tens of millions of dollars to clean up numerous AMLs throughout the West. Some of these efforts are documented in a study published in 1998 by the National Mining Association entitled "Reclaiming Inactive and Abandoned Mine Lands - What

Really is Happening”<sup>4</sup> . The NMA study presents compelling evidence that given the right opportunity, the mining industry can play a significant role in improving the environment at abandoned and inactive mines.

Unfortunately, some Good Samaritan bills introduced over the past several years have excluded mining companies from participation as Good Samaritans. There seems to be a view among some that, merely by having engaged in mining at other sites, the mining company in question is somehow “morally culpable” for the pollution caused at the AML by someone else. That simply makes no sense.

2. Federal and/or State Environmental Agencies Must Authorize Good Samaritan Projects. Good Samaritan projects should be approved by EPA and/or State environmental agencies, after prior notice to and comment from the public. Such approval should be given only if EPA or the State concludes that the project will result in significant environmental benefits. EPA or the State should also be allowed to impose conditions (such as monitoring requirements and financial assurance requirements) on the Good Samaritan as a condition of its going forward with its project. Approval of the project could be embodied in a Good Samaritan permit.

3. EPA and/or the States must be given discretion, on a case by case basis, to relax the regulatory and/or liability provisions of federal and State environmental law that might otherwise apply to the Good Samaritan. The main obstacle to mining companies, and others, conducting voluntary clean-ups at AMLs are the potential liabilities and requirements deriving from federal and state environmental laws. A Good Samaritan that begins to clean up, or even investigate, an AML runs the risk of being an “operator” under CERCLA, liable for cleaning of

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<sup>4</sup> Reclaiming Inactive and Abandoned Mine Lands - What Really is Happening, Struhsacker, D.W., and Todd, J. W., prepared for the National Mining Association, 1998.



all pollution at the site to strict Superfund standards. A Good Samaritan also runs the risk of having to comply in perpetuity with all Clean Water Act requirements for any discharges from the site, including stringent effluent limitations and water quality standards. These are liabilities and regulatory responsibilities that mining companies are unlikely to voluntarily accept, particularly with respect to AMLs that are posing significant environmental problems. Newmont has, for instance, in the past considered taking actions to voluntarily address pollution at certain inactive sites located on public land in a number of Western states, but ultimately declined to do so because of the potential liability concerns under CERCLA and the Clean Water Act.

To provide an incentive for mining companies to undertake Good Samaritan efforts, the legislation must allow the permit issuer, on a case-by-case basis, to waive or relax the liability provisions and regulatory standards that might otherwise apply to the Good Samaritan project, so long as: (1) the project would result in significant environmental benefits; and (2) the project would not go forward absent the waiver of such provisions and standards. As discussed previously, the Western Governors' Association, the National Academy of Sciences, and the Center of American West have all urged that certain environmental standards and liabilities otherwise applicable to a Good Samaritan be waived or relaxed, in order to encourage Good Samaritan clean-ups.

4. Good Samaritan Legislation must not Unduly Narrow the Types of Activities that Constitute Legitimate Remediation. Abandoned hardrock mines pose a variety of environmental and safety problems throughout the West. They also call for a variety of clean-up measures. At some sites, the physical removal of wastes and their disposal off-site may be the appropriate solution. At other sites, it may be a matter of diverting stormwater or mine drainage away from wastes and materials that are highly mineralized. And at yet still other sites, the best, most

efficient, and least costly way to partially or wholly remediate the environment may be to collect the various wastes and materials located at the site, to then process those wastes and materials to remove any valuable minerals contained in them, and then to dispose of the wastes from the reprocessing operation in an environmentally-sound manner.

AMLs are located in highly mineralized areas -- that is why mining occurred at those sites in the first place. Often, materials, wastes and ore stockpiles abandoned by historic mining operations have quantities of a desired metal (such as gold, silver, zinc, or copper) that can be recovered with modern mining technology. Allowing the mining company -- particularly a company with operations nearby to an AML -- to process such materials and wastes as part of the Good Samaritan project would provide a financial incentive for mining companies to remediate such sites.

We recognize that some citizens groups are opposed to allowing mining companies to ever make a profit through Good Samaritan activities. Some groups have even argued that a mining company might seek to misuse Good Samaritan legislation as a way to engage in new mining, beneficiation and mineral processing operations without complying with the environmental laws that apply to such operations.

Such concerns are misplaced. The hardrock mining industry has no plans to utilize Good Samaritan legislation to undermine application of all environmental laws and regulations to legitimate mining projects. Nor could they. Under our proposal, a Good Samaritan could not proceed without a permit from EPA or a State. Prior to issuing a permit, EPA and the State will certainly be aware -- and if they are not, the public would make them aware -- if a given project is in fact a stand-alone economically viable project that the mining company would undertake

even absent Good Samaritan protections. The permit-issuer will also know whether the mining company's proposed project is an operation that will be remediating existing pollution, as opposed to merely a for-profit operation that is not cleaning up any existing environmental dangers.

We also disagree with the notion that a mining company should never be in a position to make a potential profit from clean-up activities. Unlike governmental entities and some NGOs who might undertake Good Samaritan activities, a mining company will be spending its own funds (not grants obtained from EPA or States) to undertake remediation activities. If it turns out that the price of a metal recovered through remediation activities is such that the mining company has made a profit, this does not detract from the fact that, without spending public funds, the mining company has in fact remediated an environmental danger. Moreover, the price of any given metal could as well go down as go up, leaving the mining company with no profit.

## **CONCLUSION**

Legislation that embodies the concepts discussed above will provide incentives to mining companies and other entities to go forward and voluntarily remediate AMLs, while fully protecting the environment and the interests of the public. We would commend to the Subcommittee's attention Senate Bill S. 1848, introduced by Senators Wayne Allard (R-CO) and Ken Salazar (D-CO). We believe that the Salazar/Allard legislation contains the elements necessary to remove the existing legal impediments that deter mining companies and others from undertaking investigations and remediations of AMLs. We also believe that it fully protects the public interest by requiring EPA and the States to sign off on any Good Samaritan permit, and by only allowing such permits in situations where the environment will be significantly benefited.

I would be happy to answer any questions that members of this Committee may have.